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POLICE POWER AS REGARDS ADULTERATED OR MISBRANDED FOOD SHIPPED IN INTERSTATE COMMERCE.

There is Federal legislation regarding the shipping of misbranded or adulterated food in interstate commerce, and, of course, state police power can in no way touch on the reach of this legislation.

In Crescent Mfg. Co. v. Wilson, Commissioner of Agriculture, 233 Fed. 282, injunction was sought against such commissioner enforcing a New York statute to compel complainant to show the actual character and constituents of a compound known as "Mapleine" in that this compound had been admitted into the state under the Pure Food and Drugs Act.

The court said as it was settled that "regulating the sale of food for domestic animals is properly within the scope of the state police power, and the vendors of such food are not deprived of their property without due process of law by a regulation requiring disclosure of ingredients, and minimum percentage of fat and proteins, disclosure of the formula for combination not being required" (see Savage v. Jones, 225 U. S. 501). This shows that the field for such regulation is not entirely occupied by the congressional act, and if state regulation still may be as to food for consumption by animals, so also does it exist as to food for human consumption.

It being given that a state may inspect to ascertain quality, it must know as to the constituents of food, and this would seem to be true though disclosure of a formula necessarily results.

The court says: "If the constituents of a food product are disclosed, the formula or mode or manner of mixing and proportions is not necessarily disclosed to him. * * * It may be and may not be in effect disclosed, but this is far from a disclosure to the general public by label."

It hardly should be thought, that passing the test of federal inspection ought to be conclusive against the exercise of state police power. If our federal government found it necessary to examine quality or kind to ascertain if there was misbranding, it ought to be deemed only an incidental result, if thereby in effect a formula is disclosed. If state police power takes hold at all the same conclusion follows.

But it is suggested here, that a necessary disclosure of that which one has a right to keep concealed, reposes in government officials something in the way of confidential knowledge. They become possessed of trade secrets and could be enjoined from exposing them, just as a present or former employe could be thus enjoined. After all, if investigation in a way that is lawful results in necessary exposure of a formula, that is the fault of the formula. It is a thing of property but not something to hide behind, when the exercise of police power is involved. This exercise is to be looked at from a practical standpoint, and conflict between federal and state power is not to be inferred except as to fundamental things, instead of those that are merely incidental.

The court proceeded to hold that though disclosure to a state officer as to a formula resulted, this sort of disclosure, which resulted, possibly and not probably, ought not to hamper state regulation of a subject, where the regulation was excluded by Congress taking possession of the field of regulation. This does no violence to the federal law which ought to have only a reasonable construction. This view is in accordance with the trend of opinion in the Federal Supreme Court in favor of practical application of Federal law rather than of a jealous exclusion of state control.

NOTES OF IMPORTANT DECISIONS.

INCOME — STOCK DIVIDENDS AS BELONGING TO LIFE TENANT OR REMAINDERMAN.—We owe to the courtesy of Mr. Jos. H. Zumbalen, a member of St. Louis bar, the synopsis of an opinion by Judge George H. Shields, of St. Louis Circuit Court on the question of "the general law regarding the application between life tenant and remainderman of stock dividends," which question, says Judge Shields, "is about as complex a question as we find in the law books." St. Louis Union Trust Co. v. Curators of University of Missouri.

From Judge Shields' ruling in this case no appeal was taken, but he discourses quite fully upon the three rules which have been followed by American courts, known as the Kentucky rule, the Pennsylvania rule and the Massachusetts rule. All of these rules were considered by us in 82 Cent. L. J. 115, and suggestion was made by us that the variety of ruling indicated above was of such importance that the matter ought to be taken care of by a statute to be proposed by the Commissioners on Uniform Laws.

Judge Shields states the rules observed in different States as follows: "The Kentucky rule awards extraordinary, as well as ordinary, distributions, whether in the form of stock or cash dividends, to the life tenant; the Pennsylvania rule considers the time when the fund represented by the extraordinary dividend, if accumulated out of earnings, was so accumulated in relation to the time the life estate vested," or if accumulated partly before and party after apportionment is ordered, then according to principle above. The Massachusetts rule "holds that cash dividends, however large, are income, and stock dividends, however made, are capital."

Judge Shields follows the Pennsylvania or apportionment rule, a rule to which we showed ourselves inclined in 82 Cent. L. J. 115, supra.

We would very much like to reproduce the excellent opinion by Judge Shields and exhibit the reasoning he employs to his conclusion and the copious authority he cites. We have, however, already given some attention to the question and now find that there is such irreconcilable conflict among the States, that the question must be threshed out in each jurisdiction. The rule of apportionment seems to us the only logical and just rule to follow.

POLICE POWER—ORDINANCE PROHIBITING THE ERECTION OF STORES IN RESIDENTIAL DISTRICT.—In State v. Houghton, 158 N. W. 1017, the Supreme Court of Minnesota decides by majority ruling that an ordinance under statutory authority, prohibiting the erection within a residential district of any stores, factories, etc., was unconstitutional, so far, at least, as it applied to stores.

The majority opinion cites a great many cases, but none directly concerning the question of erecting a store in a residential district.

It may be conceded that, if objection to a structure is based only upon esthetic considerations, it is unavailable against the establishment of a lawful business in any locality. But if occupations may affect the health, safety and comfort of people in a neighborhood, they do come under the police power and their erection may be restrained.

What does the word comfort stand for in such a situation? It has been said that: "The police power of a State embraces regulations designed to promote the public convenience or the general prosperity as well as those to promote public health, morals or safety and is not confined to the suppression of what is offensive, disorderly or unsanitary, but extends to what is for the greatest welfare of the State." Bacon v. Walker, 204 U. S. 311. And Justice Holmes, in Noble State Bank v. Haskell, 219 U. S. 104, employed language fully as broad as this.

It is well known that there are residence and business districts in cities, and that courts will declare some businesses in the former nuisances which would not be so adjudged were they in business districts. It seems to us that this presents reason for classifying such districts and large latitude should be given cities in judging what would be rightful classification.

There is very much in these cases to show that the individual views of judges, rather than well defined principle, control conclusions in this class of cases. The attempt at definition of the police power does not aid greatly in the matter. What Judge Holmes said in the Noble State Bank case that "prevailing morality or strong and preponderant opinion" should be a test of the reach of police power, may simplify the question by validating almost any kind of legislative enactment ought to be deemed good prima facie evidence.

LIABILITY FOR INJURIES CAUSED BY RUNAWAY HORSES.

Depends on Negligence.—The liability of the owner of a team for injuries done by it while running away depends upon negligence.[1] The mere fact that the runaway team escaped from the private land of the owner is insufficient to create liability.[2]

Where it appeared that the defendant's team was being driven on the day in question to a sled; that the horses were spirited, but had never run away before; that while going down a long hill one of the horses jumped for some unknown reason, and a moment later the other horse commenced to run; that the driver and another occupant of the sled threw their combined weight on the lines, but could not stop the team; that the team ran up a street, and seeing a rig in front of them, the driver drew the team to the left to avoid it, and the sled came into collision with a lamppost, the bolts holding the whiffletrees came out, and the free team dashed up the street, collided with plaintiff's automobile, and inflicted the damage complained of; that the horses were driven with new harness, and the same whiffletrees with which they had been used without trouble during the previous summer and fall; and where there was no evidence that the driver was not a careful, prudent, and competent man, it was held that a verdict was properly directed for the defendant, as no negligence in the handling of the team was shown.[3]

A competent driver of a one-horse wagon was proceeding along the middle of a public road. A ladder in the wagon projected some distance over the rear of the wagon. Just as an automobile, which had approached from the rear, started to pass, the wheels of the wagon struck the tracks of a railway at a curve, and the rear end of the wagon was deflected sufficiently to throw the end of the ladder against the automobile, which was about 6 feet from the wagon. The impact threw the driver from the wagon and frightened the horse, causing it to run away and collide with plaintiff's vehicle, damaging the same. Held, that there was no negligence and that no recovery could be had.[4]

Where the harness appeared to be in good condition when a livery rig left the stable, mere proof that the horse ran away when the harness unexpectedly broke, was insufficient to show liability.[5]

Negligent Driving.—Whether or not a driver is negligent in the manner or the place in which he drives his team depends upon all the attendant circumstances; the character of the horses; their age, and the length of time they have been driven; whether they have been hard worked recently, or are "feeling their oats;" whether they are likely to see or hear the thing most likely to frighten horses of their peculiar disposition, are some of the things to be considered in determining such question.

So, whether one was negligent in driving over a viaduct when a train, which would pass under the viaduct, was approaching, depended primarily on the character of the team.[6] If, within the knowledge of the owner, the propensity or disposition of neither of the horses composing his team is such that it may reasonably be foreseen or expected that a runaway will occur when the team is driven in a careful manner, he is not liable for injuries caused by the team running away without his fault.[7]

The mere facts that more than seven years before the runaway in question, one

(1) Briggs v. Lake Auburn Cr. Ice Co., 112 Me. 344, 92 Atl. 185; Bull v. Hotel Co., 135 La. 802, 66 So. 227.

(2) Briggs v. Lake Auburn Cr. Ice Co., 112 Me. 344, 92 Atl. 185.

(3) Stuch v. Town (Mich. 1914), 144 N. W. 833.

(4) Tooker v. Fowler, 147 App. Div. (N. Y.) 164, 132 N. Y. Supp. 213.

(5) Butter v. Natanson, 147 N. Y. Supp. 342.

(6) Kimble v. Stackpole, 60 Wash. 35, 110 Pac. 677.

(7) Brooks v. Kauffman (Neb., 1913), 141 N. W. 831.

of the horses had run away in a cornfield, and that he had gotten away from his owner when a mere colt and gone to another farm, were insufficient to show that his owner was negligent in driving him on the road.[8]

Violation of Ordinance.—In some states the violation of an ordinance in regard to the care and control of teams in city streets, is only evidence of negligence,[9] while in others it constitutes negligence.[10]

Such an ordinance is inapplicable to a case where the team was on privately-owned land when it started to run, and thereafter escaped to a public street.[11]

Where an ordinance requires unattended teams in the streets to be hitched, it is immaterial to the question of a violation of the ordinance that a driver set the brake of his wagon and wrapped the lines about it.[12]

Leaving Team Unattended and Unhitched.—The person in charge of a team is required to exercise ordinary care to hitch it in some reasonably secure manner, upon leaving it in a city street, and a breach of this duty constitutes negligence,[13] or at least raises a presumption of negligence.[14] When such presumption arises, the owner then may prove in defense that the horse was gentle and his habits good, and that, in the exercise of ordinary care, it could not have been anticipated that he would become frightened or run away.[15]

In a Missouri case where the negligence alleged was in leaving the team unhitched and unattended, the court complained that the testimony of a witness, who saw the horses running, that there was nothing tied to them, had but little probative force, "for it is quite possible that a horse that is fastened may break away without any portion of the halter or other fastening remaining upon him." However, the court held, and no doubt rightly so, that such testimony was sufficient to take to the jury the question whether or not the team was hitched.[16]

Recovery was allowed in a case where a carriage passenger was injured in a runaway; the horses starting while the driver was attending to taking on other passengers, and while the reins were lying loose. What caused the horses to run away did not appear, but as one of them kicked at the driver when he attempted to get the reins preparatory to starting, and they immediately ran away, the court declared it safe to infer that they were not ordinarily safe or gentle horses. Further, the court said: "We also think the jury was authorized to find that the driver was negligent in not keeping hold of the reins, or hitching his horses. Unless he knew that the horses were gentle and would stand without being held, it was his duty to have his hands on the reins so that he could control them, or to have hitched them. There is no evidence that the horses were gentle or safe, and the presumption from their conduct is that they were not."[17]

Where there was evidence that the team in question was restless and nervous and had acted in a fractious manner before, that it was left unhitched and unattended, and that the lines were loose and the brake on the wagon not set, and the team took fright at the loud slamming of a gate and ran away, injuring the plaintiff, it was held that a finding in plaintiff's favor was justified.[18]

(8) Brooks v. Kauffman (Neb., 1913), 141 N. W. 831.
(9) Briggs v. Lake Auburn Cr. Ice Co., 112 Me. 344, 92 Atl. 185.
(10) Crone v. St. Louis Oil Co., 176 Mo. App. 344, 158 S. W. 417.
(11) Briggs v. Lake Auburn Cr. Ice Co., 112 Me. 344, 92 Atl. 185.
(12) Perkins v. Grayson-Owen Co. (Cal. App., 1914), 143 Pac. 257.
(13) Miller v. United Rys. Co., 155 Mo. App. 528, 134 S. W. 1045.
(14) Rosenberg v. Dahl (Ky., 1915), 172 S. W. 113; Dooling v. New York, 148 App. Div. (N. Y.) 713, 132 N. Y. Supp. 1012.
(15) Rosenberg v. Dahl (Ky., 1915), 172 S. W. 113.
(16) Crone v. St. Louis Oil Co., 176 Mo. App. 344, 158 S. W. 417.
(17) Palmer Tr. Co. v. Long, 140 Ky. 111, 130 S. W. 961.
(18) Paine v. Ward, 11 Cal. App. 354, 105 Pac. 132

Whether it was negligent for the driver of a team to leave it untied and unattended, in a factory yard, behind another team, just before time for the factory whistles to blow, while he went into an office 80 feet away, was held to be a question for the jury, although the driver knew that the team was gentle.[19]

It has been held that, where the owner of a team left it standing unattended and unhitched in an uninclosed space adjacent to a public street, and it ran away and injured a person, he was liable in damages therefor.[20]

Whether or not a driver was negligent in stopping a young horse, being driven for the first time, facing and close to a railroad crossing, where a freight train was doing switching, accompanied by the usual noise, and going to the rear of his vehicle, where he was out of reach of the lines, without hitching the horse, and it took fright and ran away, was a question for the jury.[21]

The driver of an ash cart backed the same against a dock, blocked the wheels, and went to the rear of the cart and proceeded to shovel ashes into the cart. While thus engaged, a passing tugboat blew its whistle, and the horse ran away, and collided with and fatally injured the plaintiff's horse. The defendant had owned the horse about six months, and there was evidence that the horse never showed any disposition to run away, but, on the contrary, he was slow and lazy; that he had been driven under the elevated railroad, and had been used about the water front, where tugboats were whistling, and had never manifested fear or nervousness. It was held that the evidence did not warrant a finding of negligence.[22]

(19) Migliacco v. Smith Fuel Co., 151 Ia. 705, 130 N. W. 720.

(20) Miller v. United Rys. Co., 155 Mo. App. 528, 134 S. W. 1045.

(21) Dennery v. Great A. & P. Tea Co., 82 N. J. L. 517, 81 Atl. 861.

(22) Reardon v. New York, 132 N. Y. Supp. 332.

Evidence that the defendant left his horses unhitched and unheld while his back was turned to them, he knowing they were spirited horses and had previously run away, made a *prima facie* case of negligence.[23]

Hitching insecurely.—When a driver has exercised ordinary care to hitch his horses in an ordinarily safe way, he is not liable if they break loose and injure someone, unless he was negligent in driving such a team.[24]

Whether a hitching by tieing the lines to the hounds of the wagon was with reasonable security, was declare to be a question for the jury.[25]

A driver of a wagon loaded with coal stopped his team near an iron railing, and tied the outside horse, which was restive, to the railing. He left them, and they became frightened, broke the tie strap, ran away, and injured plaintiff's horse. The strap used was apparently suitable for hitching purposes. Held, that a verdict for the plaintiff was against the weight of the evidence.[26]

Presumption from Runaway.—In a number of jurisdictions it is held that the fact that a team of horses is running away unattended in a public street is evidence of negligence on the part of the person in charge of them, and that the burden is thus placed on the owner to explain away the inference.[27]

This inference of negligence is based upon the rule that, when that which causes the injury is under the exclusive manage-

(23) Groom v. Kavanagh, 97 Mo. App. 362.

(24) Mann v. Northeastern K. T. Co., 83 Kan. 266, 111 Pac. 181.

(25) Miller v. United Rys. Co., 155 Mo. App. 528, 134 S. W. 1045.

(26) Mumm v. Dance, 155 App. Div. (N. Y.) 6, 139 N. Y. Supp. 566.

(27) Breidenbach v. McCormick Co., 21 Cal. App. 709, 132 Pac. 771; Tietje v. Catalona (N. J. L., 1915), 95 Atl. 733; Dennery v. Great A. & P. Tea Co., 82 N. J. L. 517, 81 Atl. 861; Furlong v. Winne & McKain Co., 166 App. Div. (N. Y.) 882, 152 N. Y. Supp. 245; Hollaran v. New York, 168 App. Div. (N. Y.) 469, 9 N. C. C. A. 890, 153 N. Y. Supp. 447; Gorsuch v. Swan, 109 Tenn. 36, 69 S. W. 1113.

ment of the defendant, and the occurrence is such as in the ordinary course of things does not happen if ordinary care is used, a presumption of negligence arises upon the happening thereof.[28]

In support of this view, it is said that it is abnormal for horses without a driver to travel in a public street, and nonetheless so if they are running away. Horses are required to be attended or hitched because experience teaches that under such conditions their escape is exceptional and contrary to the usual order of events. Where, then, they are found loose and unattended the primary inference is that the attendance or fastening that commonly precludes escape was absent. It is true that experience also shows that animals escape the mastery of prudent and skillful custodians, but such happenings are anomalous. "The question, then, is what inference should be drawn from a phenomenon that deviates from the general, and falls into the exceptional experience. The general truth is that hitched and attended horses remain secure, but exceptions arise. Why should we infer that the general rule does not prevail and that the exception is present? If the owner of the horses asserts that his case comes within the exception, as in analogous cases, he has the burden of showing it. He should in that case show that he was not culpable in keeping them, inasmuch as they traveled in violation of common and safe usage. I conceive that one encumbering a street to the injury of those lawfully using it has no presumptive right to immunity, and yet such would be the case if the owner need not account for the failure of his custody of his property, and may be regarded as prudent until a person run down in the street shall have traced the incident and revealed what the owner and his servant had negligently done or omitted, and of which the one or the other has knowledge. The highway was misused; due care usually prevents such violation of it; the owner through himself or his servant knows whether he did what amounts to such care. Let him then show that he did the requisite things, but without avail, or that there is excuse for failure to do them."[29]

"By reason of their nature and training, horses can be safely utilized to draw vehicles upon public streets only when controlled by reasonably competent drivers. This fact is in such complete accord with universal experience that the legal duty to supply such a driver exists, and consequently it is *prima facie* evidence of negligence for a person to permit his horse attached to a wagon to go out upon a public street without any driver or other person in charge. If, therefore, a horse and wagon are found passing along a street with no one in charge, the absence of the driver gives rise to a *prima facie* presumption of negligence on the part of the owner. The fact that the horse is running does not negative this presumption."[30]

So, it has been held that a presumption of negligence on the part of the owner arises when an unattended horse is found running on the sidewalk.[31]

Where the undisputed testimony tends to show that the runaway was not due to any fault of the driver, and shows all the facts relating to the runaway, there is no room for a presumption based upon the fact that the team was seen running away unattended.[32]

This rule is not universally followed, however. In other states it is held that there must be some evidence tending to show negligence.

In a Missouri case the court said that, "Most decisions sustain the proposition

(28) Breidenbach v. McCormick Co., 20 Cal. App. 184, 128 Pac. 423.

(29) Hollaran v. New York, 168 App. Div. (N. Y.) 469, 9 N. C. C. A. 890, 153 N. Y. Supp. 447.

(30) Dennery v. Great A. & P. Tea Co., 82 N. J. L. 517, 81 Atl. 861.

(31) Gannon v. Wilson (Pa., 1886), 5 Atl. 381.

(32) James v. Morten, 79 Misc. (N. Y.) 255, 139 N. Y. Supp. 941.

that negligence cannot be inferred merely from the fact a team of horses ran away and caused damage, because runaways occur from the fright of horses when those in charge of them are not at fault, but in the exercise of reasonable care."[33]

In this case, and in three out of the six cases cited by the court, the team was accompanied by a driver; two of the cases cited do not sustain the court, and in the other there was evidence concerning the starting of the team.

Injury Incurred in Attempting to Stop Runaway.—Whether one is negligent in attempting to stop a runaway team depends upon the risk involved in the attempt, and more upon the danger to others in permitting the team to continue unrestrained. It is not necessary that the person in peril should be incapable by age or otherwise of appreciating his danger.[34] If a team of horses are running away in a measurably busy street, and there is ample opportunity for harm to come to someone, a person of good physique may be justified in attempting to stop them, although danger is not at the moment imminent to a definite person.[35]

"The question is whether a man strong in courage and capable physically should be content to let the probably destructive agency go its way or attempt to stop it. It is not necessary to let admiration for the deed influence our judgment of its rational nature. In the Eckert and Muhs cases it is said that the person attempting the service was under a duty to rescue the person in danger. Such sense of duty is based upon feelings of the highest value. Whether it was or was not culpable to obey the prompting to that duty, depends upon the conditions presented. It is a choice between strong and brave men keeping themselves in assured safety and letting the horses make their hurtling way unchecked, or using efforts as prudently as the occasion permits to avert it."[36]

The deceased, a blacksmith, was working near the front door of his shop when a runaway horse, unattended, dashed by in the street, and deceased ran out and succeeded in stopping the horse, but was himself killed in the act. It appeared that the neighborhood in question was a tenement district, and many children living in the neighborhod were in the habit of playing in the street; that across from the shop was a kindergarten, attended by small children, and having an exit on the street in question; that a public school was near by; that these schools dismissed between 2:30 and 3 o'clock in the afternoon, and the accident happened about 3 o'clock; that there were many children in the street, trying to avoid the runaway horse. It was held that the jury properly found that deceased was guilty of no negligence.[37]

The plaintiff was injured in attempting to stop a runaway team belonging to the defendant, in a public street. The team was running with an empty coal wagon, and there were playing in the street a number of children, two of whom were the plaintiff's. He testified that in order to protect the children he ran into the street and caught hold of the horses, and finally brought them to a stop; but in so doing he was injured. It was held that, upon proof of negligence on the part of the driver, the plaintiff was entitled to recover.[38]

Where an unattended motor truck was running down hill in a public street at an accelerating speed, and if allowed to pro-

(33) Fleischman v. Polar Wave I. & F. Co., 148 Mo. App. 117, 127 S. W. 660.

(34) Hollaran v. New York, 168 App. Div. (N. Y.) 469, 9 N. C. C. A. 890, 153 N. Y. Supp. 447.

(35) Hollaran v. New York, 168 App. Div. (N. Y.) 469, 9 N. C. C. A. 890, 153 N. Y. Supp. 447.

(36) Hollaran v. New York, 168 App. Div. (N. Y.) 469, 9 N. C. C. A. 890, 153 N. Y. Supp. 447.

(37) Manthey v. Rauenbuehler, 71 App. Div. (N. Y.) 173, 9 N. C. C. A. 892n.

(38) Furlong v. Winne & McKain Co., 166 App. Div. (N. Y.) 82, 9 N. C. C. A. 890n, 152 N. Y. Supp. 245.

ceed would strike wagons, behind which were men and horses, it was not *per se* negligence for a bystander to attempt to catch the truck and change its course.[39]

C. P. BERRY.

St. Louis, Mo.

(39) American Ex. Co. v. Terry (Md., 1915), 94 Atl. 1026.

BILLS AND NOTES—INDORSEMENT.

COPELAND v. BURKE, et al.

Supreme Court of Oklahoma. June 27, 1916.

158 Pac. 1162.

(Syllabus by the Court.)

The words: "I transfer my right, title and interest in same. J. M. Burk"—written upon the back of a negotiable instrument, by the payee, is not a qualified indorsement, and such payee is liable thereon as an ordinary indorser.

EDWARDS, C. The parties will be referred to as plaintiff and defendant, according to their positions in the lower court. The plaintiff sued the defendant and one E. S. Messengill in the district court upon a negotiable promissory note executed by said Messengill to the defendant, J. M. Burke, payee, and by the said defendant transferred to the plaintiff by memorandum upon the back of the note in these words, "I transfer my right, title and interest in same. J. M. Burk." The petition is in the ordinary form, alleging the making of the note, its transfer for a valuable consideration before maturity, with a copy of the note and indorsement thereon attached. The defendant Burke demurred, assigning the reason that the petition did not constitute a cause of action against him. The demurrer was sustained. The plaintiff elected to stand upon his petition. Judgment was thereupon rendered for defendant for costs, and the plaintiff appeals.

The only assignment of error is that the court erred in sustaining the demurrer of defendant to the petition of plaintiff.

The case must be determined by the meaning and effect to be given the words preceding the signature of the defendant upon the back of the note in controversy. Do the words used constitute the defendant an indorser in due course, and as such liable for the payment of the note, or, is he a mere assignor? Sections 4088 and 4113, Revised Laws 1910, with reference to qualified indorsement read as follows:

"Qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words, 'Without recourse,' or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument."

"A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicated by appropriate words his intention to be bound in some other capacity."

It will be seen that a special indorsement does not destroy the negotiability of a note, and the question of negotiability does not enter into the case. There are two widely divergent lines of authority in cases of this kind, one line holding that a memorandum of similar import to that here used exempts the indorser from personal liability or constitutes him a mere assignor. One of the leading cases sustaining this line of holding is Hailey v. Falconer, 32 Ala. 536, in which it is held that an indorsement in these words:

"For value received this 28th day of February, 1850, I transfer unto John P. Hailey all my right and title in the within note, to be enjoyed in the same manner as may have been by me"

—exempts the indorser from personal liability on the note. Another authority, strongly sustaining this line, is Spencer v. Halpern, 62 Ark. 595, 37 S. W. 711, 36 L. R. A. 120, the indorsement in that case being in these words:

"For value received, I hereby transfer my interest in the within note to Isaac Halpern. Geo. Spencer"

—the court in the course of the opinion saying:

"Had the payee intended to be bound as indorser, why use so many words? Had the transferee expected more than 'the interest' of the transferor, why did he accept the instrument transferring only his interest? We must accept and interpret the completed contract as the parties made it. They have seen proper to express it at length, and have used unambiguous terms. Construing the terms, 'my interest,' most strongly against the transferor, we do not feel authorized to say they mean anything more than simply 'my interest.'"

The court in this case adopts the maxim, "Expressio unius est exclusio alterius," and rejects the maxim, "Expressio eorum quae tacite insunt nihil operatur." This line is further sustained by Tiedeman on Commercial Paper, § 265:

"The declaration that the payee assigns or transfers all his right, title and interest in the paper would seem to limit in a most effective way the right acquired by the transferee to those which the transferor had therein, and thus prevent the writing from operating as an indorsement."

The other line of authority is to the effect that an indorser, in order to limit his personal

liability, must do so by words clearly expressing such intent. Some of the decisions sustaining this line are as follows: The early English case of Richards v. Franklin, 9 Car. & P. 221, cited by Mr. Tiedeman, in which the indorsement was in these words:

"I hereby assign this draft and all benefit of the money secured thereby to John Grainger of Bessilsleigh, in the county of Berks, laborer; and order the within named Thomas Fox Hitchcock to pay him the amount and all interest in respect thereof"

—which was held to be merely an ordinary indorsement. Daniel on Negotiable Instruments, § 688c, reads:

"The question arising in such cases is a nice one, and depends upon rules of legal interpretation. The mere signature of the payee, indorsed on the paper, imports an executed contract of assignment, with its implications, and also an executory contract of conditional liability, with its implications. The assignment would be as complete by the mere signature as with the words of assignment written over it. The conditional liability which is executory is implied by the executed contract of assignment and the signature under it, which carries the legal title; and the question is, Does the writing over a signature of an express assignment, which the law imports from the signature per se, exclude and negative the idea of conditional liability, which the law also imports if such assignment were not expressed in full? We think not. * * * When the thing done creates the implication of another to be done, we cannot think that the mere expression of the former in full can be regarded as excluding its consequences, when that consequence would follow if the expression were omitted."

The most often cited authority is the case of Sears v. Lantz & Bates et al., 47 Iowa, 658, in which the indorsement was in these words:

"December 18th, 1876, I hereby assign all my right and title to Louis Meckley. John Bowman"

—which the court held to be equivalent to an indorsement of the note, and bound the assignor as an indorser, the court following the earlier case of Sans v. Wood, 1 Iowa, 263, in which the same holding was made upon an indorsement in these words, "I assign the within note to Miss Sarah Coffin." The same holding is made in the case of Adams v. Blethen, 65 Me. 19, 22 Am. Rep. 547, upon a similar indorsement. In the case of Citizens' National Bank v. Walton, 96 Va. 435, 31 S. E. 890, the court holds:

"Writing on back of negotiable note, signed by one of its two payees, 'For value received, I hereby assign and transfer to F. all right, title, and interest that I may have in the within note,' renders him liable to an innocent holder as an indorser, and not as an assignor, and without regard to the equities between him and the other payee, though F. be such payee."

In the case of Markey v. Corey, 108 Mich. 184, 66 N. W. 493, 36 L. R. A. 117, 62 Am. St. Rep. 698, it is held:

"The negotiability of a promissory note is not destroyed because of an indorsement thereon that it is given in accordance with a certain contract, although the note is one of a series which, by the terms of such contract, were to become payable, at the option of the payee, on failure to pay any of them."

The court in this case follows the Iowa cases above referred to, and says:

"The usual mode of transfer of a promissory note is by simply writing the indorser's name upon the back, or by writing also over it, the direction to pay the indorser named, or order, or to him or bearer. An indorsement, however, may be made in large terms and the indorser be held liable as such."

The Supreme Court of Minnesota, in the case of Maine Trust & Banking Co. v. Patrick J. Butler, 45 Minn. 506, 48 N. W. 333, 12 L. R. A. 370, in a well-reasoned case, follows the doctrine laid down in Daniel on Negotiable Instruments, and cites with approval the Iowa and Maine cases above referred to, and adopts the latter maxim referred to by the Arkansas court in the case of Spencer v. Halpern, supra. In the case considered by the Minnesota court the indorsement was in these words:

"For value received I hereby assign and transfer the within note, together with all interest in and all rights under the mortgage securing the same, to L. D. Cooke"

—and the court held that this was not a qualified indorsement, and that the payee was liable as an ordinary indorser.

This question not having heretofore been presented to this court, we feel constrained to adopt the construction placed upon the indorsements of this character by the last-cited line of authorities, as supported by the better reasoning and more in consonance with the commercial needs of the day. In these modern times commercial paper has come to play a very large part in the business life of the country. Commerce is carried on by means of business credit. Commercial paper in great volume continuously passes current by indorsement. The effect of and the liability incurred by an indorsement is a matter of common knowledge. The phrase, "without recourse," as employed in such business transactions, is in everyday use, and we can hardly conceive of a person engaged in business affairs of importance, as was the defendant in this case, who is not familiar with its use and meaning. If the defendant did not intend to be bound by his indorsement on the note in question, he should have used some words which would clearly indicate that he was not an ordinary indorser.

The very terms of our statute (§ 4088, Revised Laws 1910), supra, specifies that the indorsement may be qualified by the use of the words, "without recourse," or words of similar import. In our judgment the defendant has not so qualified his indorsement and is liable.

It follows that the judgment must be reversed.

PER CURIAM. Adopted in whole.

NOTE.—*Qualified Indorsement of Negotiable Paper.*—The instant case has quite fully referred to authority both *pro* and *con* on the question involved and it does not appear that the phraseology of Negotiable Instruments Law as to indorsements without recourse or by words of similar import introduces any new rule on this subject. There would seem still left open such reasoning as we see was employed in Spencer v. Halpern, 62 Ark. 595, 37 S. W. 311, 36 L. R. A. 120. A case, however, by Illinois Appellate Court and later referred to with seeming approval is not referred to in the opinion. Ellsworth v. Varney, 83 Ill. App. 94; Keenan v. Blue, 146 Ill. App. 7, 13. In the former case the indorsement considered was: "For value received I hereby convey my right, title and interest in within notes to E." This was ruled to be a qualified indorsement and the words thereof "express no further intention than to pass to E the title and interest which V had in the notes. Having expressed but one of the two legal implications from a general indorsement, or an indorsement in blank, we are constrained to hold that the indorser intended to exclude the other implication." Then are cited the same cases that Spencer v. Halpern referred to.

Maine Trust & Bkg. Co. v. Butler, 45 Minn. 506, 48 N. W. 333, 12 L. R. A. 370, referred to by the instant case is the supporting authority for some of the other cases it cites. It stresses the fact, that it was so easy for the indorser to have expressly limited his liability had he thus intended, that the conclusion arises that he did not thus intend. The conclusion was dissented from by the Chief Justice and one of his associates. It was said in this dissent that: "When the writing expresses, no matter in what form, the purpose with which the name is indorsed, it excludes the implication of any other purpose. When the writing expresses one contract, the parties will be presumed to have expressed all that they intended; the written will be presumed to be the entire contract. It shows that the parties were not content with the implication of intention, which the law raises upon the bare signature on the back of the note, for why should they take pains to express in writing one of the contracts which would be implied from the bare signature, if they intended not only that contract but the other also."

This reasoning appears to us very forcible, and unless it is held that implication is not as strong as expression, we are unable to see why in a writing expressive of intention to transfer title, the words thereof are not of similar import to the words "without recourse." All words of a contract are to be given some force and are not to be regarded as employed uselessly, but if they mean no more than a blank indorsement, their use is entirely nugatory. C.

ITEMS OF PROFESSIONAL INTEREST.

THE DECENNIAL ANNIVERSARY BANQUET OF THE UNITED STATES COURT FOR CHINA.

Our good friend, Judge Charles S. Lobingier, of the United States Court for China, sent us the program of the banquet held to celebrate the decennial anniversary of the court. The banquet was held under the auspices of the Far Eastern American Bar Association. Among the addresses we notice the following:

The Court and American Law, by Mr. Stirling Fessenden.

The Court and American Influence, by Dr. F. L. Hawks Pott.

The Court Below, by Hon. Edwin S. Cunningham.

The Extra-territorial Court, by Sir Haviland W. De Sausmarez, Chief Judge, H. B. M. Supreme Court.

The Court's Diplomatic Side, by Hon. Paul S. Reinsch, American Minister to China.

Judge Lobingier acted as toastmaster.

REPORT OF THE MEETING OF THE OHIO BAR ASSOCIATION.

The thirty-seventh annual meeting of the Ohio Bar Association was held at Cedar Point, July 5th, 6th and 7th, 1916. The meeting was well attended, and the addresses were above the average. Especially noticeable was the address of Senator Thomas J. Walsh, of Montana, on the Federal Farm Loan Bill, which will be published for its intrinsic value, as a brief on the constitutionality of this act, in a later issue of this journal.

Another address delivered at this meeting, which deserves mention, in addition to the president's address, was that of Judge E. B. Kinkead, of Columbus, on Reform of the Judicial System. Judge Kinkead's address was very interesting, but confined itself very largely to the judicial system of Ohio, making suggestions for reform.

On the question of reform of judicial administration the association took an advanced stand. After much discussion and after the measure had been adopted, reconsidered and afterward readopted, it took shape in the following resolution

That a special committee be appointed to urge before the next legislature the importance of providing by law:

(a) That the Supreme Court be empowered to make, alter and amend, from time to time,

rules relating to matters of pleading, practice and procedure in the several courts of the state; such rules to supersede the provisions of the code of civil procedure upon kindred matters.

(b) That the Chief Justice of the Supreme Court be made the executive head of all the courts of the State, with power to regulate their business, transfer judges for the relief of congested courts, or for any other reason, and, generally, to supervise their business; and that reports required by law to be made of the business of the several courts of the State, by or to any officer, be filed with said Chief Justice.

The officers elected for the ensuing year are:

President, Judge E. B. King, of Sandusky.

Secretary, Charles E. Blanchard, of Columbus.

Treasurer, Clem R. Gilmore, of Dayton.

REPORT OF THE MEETING OF THE AMERICAN BAR ASSOCIATION.

The American Bar Association met August 30th to September 1st, 1916, in the city of Chicago. About one thousand delegates were in attendance, the threatened railroad strike interfering with what promised to be a record attendance.

President Root's Address.

President Root's address was the subject of favorable comment throughout the whole session. The address will appear in an early issue of this journal and will repay careful study. The beautiful Gold Room of the Congress Hotel was packed to the doors while Mr. Root was delivering his address, and so tense was the interest manifested that one lawyer, carried away by the compelling logic of the speaker, started to applaud a sentiment which, though deeply felt, would hardly have been expressed before so large a gathering. Mr. Root was beginning a sentence in defense of the American lawyer, in which he declared that the attorney was a necessary adjunct to commerce and business and was entitled to demand a reasonable toll for his services. The use of the word "toll" in this connection had such an effect on this fee-hungry delegate that he went off alone into the most rapturous applause which was checked only by the good natured laughter of the entire assemblage. Even Mr. Root smiled blandly and paused for a moment before reaching his antithesis that the lawyer, on the other hand, was not a producer and only a necessary evil, and that there were many of them who were not really necessary and whose services could be otherwise employed with greater profit to themselves and society. No spontaneous applause followed this declaration.

A Laurel Wreath for Shelton.

Too much credit cannot be given to our good friend, Hon. Thomas W. Shelton, of Norfolk, Va., for his indefatigable labors in promoting the interests of the association. His efforts were so well received that someone proposed a laurel wreath, but some wag remarked that Mr. Shelton already had a "shining crown," which was so resplendently in evidence under the glow of a thousand electric lights that the laurel wreath was regarded as wholly unnecessary.

Advance in Uniform Judicial Procedure.

Mr. Shelton is a man who does things. As chairman of the Committee to Reform Judicial Procedure, he succeeded, by efforts which were put forth up to a few days of the meeting of the association, in securing the passage in the Senate of the association's bill for the repeal of § 914 of the Rev. Statutes of the United States and the passage of the bill empowering the Supreme Court to make the rules of pleading and practice for the law side of the federal courts as that court has recently done with respect to the equity rules. This bill passed the Senate while the bar association was in session, and the event was received with cheers. One thing the association did not know was that the passage of the bill was hastened by a telegram from a member of the Senate Judiciary Committee, who is also a member of the association and that this telegram was sent at the earnest request of Mr. Shelton. The bill is expected to pass the House, which has already passed similar bills at other sessions.

Mr. Shelton is a man of ideals and visions, and one thing toward which he is so energetically keeping a straight course is a uniform system of judicial procedure in law and equity, from Maine to California, through a practice code prepared by the Supreme Court of the United States, which, Mr. Shelton believes, will be accepted generally by the States, not only because such a code is most likely to be superior to any other code, but also because of the desirability of conforming State procedure to the federal practice in order to simplify the labors of practicing lawyers and minimizing the possibilities of errors in pleading and practice. This idea has caught the association's fancy, and Mr. Shelton was unanimously and enthusiastically urged to continue the fight for uniform judicial procedure.

Meeting of the Judicial Sections.

Mr. Shelton had also the satisfaction of seeing another idea of his develop and pass completely out of his care and control, being able now to stand alone. I refer to the organization

of the Judicial Section, now a permanent department of the association's activities. The Committee on Uniform Judicial Procedure called the first meeting of the judicial section two years ago in Montreal for the purpose of getting all appellate and trial judges together to discuss, "over their back yard fences," according to Mr. Shelton's quaint expression, the differences that exist in the administration of justice in the different States. The meeting this year was well attended, nearly two hundred judges of appellate and trial courts meeting at the informal dinner on Tuesday evening, August 29, 1916. The editor of the Central Law Journal was invited to attend, on the assumption that since a periodical like the Central Law Journal is a sort of court of last resort, the editor's duties in criticising the opinions of the courts are of a judicial nature. At any rate, we were there and learned many of the inside secrets of how judgments are reached and appeals disposed of. Hon. Orrin N. Carter, of the Supreme Court of Illinois, presided over the meeting of the Judicial Section, and it was due to his embarrassment in introducing former President Taft that opportunity was given to the members of the section to express their affection for the former President. Judge Carter started to introduce the former chief executive as "President," then as "Professor," then as "Judge," and then frankly declared he did not know what title to give him. Mr. Root came to his assistance by declaring that Mr. Taft was pre-eminent as a judge and that his best friends were hoping that he would finish his course in life as he began it—upon the bench. This brought forth great cheering, which "Judge" Taft acknowledged by a broad smile of satisfaction. Mr. Taft defended the judiciary from indiscriminate attacks and seemed most delighted at the complete collapse of the idea for the recall of judicial decisions.

Mr. Wigmore's Proposition to Reverse the Rules.

The sharp controversy which Mr. John H. Wigmore, of Chicago, raised with the Executive Committee resulted disastrously for Mr. Wigmore and Mr. MacChesney, of Chicago, who was Mr. Wigmore's chief aid on the floor in attempting to secure a change in the rules which would make it necessary for every member of the American Bar Association to be a member of his State bar association in order to be eligible for membership in the national organization. The vote was about two to one in the negative.

The very valuable paper of Hon. Frank J. Goodnow, President of Johns Hopkins University, on "Administrative Discretion and Private Rights," appeared in this journal in the issue of September 8th, 1916.

The election of president was bitterly contested between Walter George Smith, of Philadelphia, and Senator George Sutherland, of Salt Lake City. Senator Sutherland was elected by a very narrow margin. It is earnestly to be hoped that Mr. Smith's thirty years of unremitting service for the association will not go unrewarded at the next meeting of the association.

A. H. ROBBINS.

BOOK REVIEWS.

ATWELL'S FEDERAL CRIMINAL LAW—SECOND EDITION.

This work is a treatise on Federal Criminal Law Procedure, the first volume appearing in 1911. It is written by Mr. William H. Atwell, for many years United States Attorney. It is "a sort of compendium of Federal Law and Procedure and indictment forms that may be of instant assistance" to the bar. The book is written with a practical purpose in view, is well arranged for treatment of the statutes referred to and buttressed with authority, referred to in the body of the text and not in notes at the foot of the pages. There is contained in the book the Federal Penal Code.

The volume is gotten up in excellent style of type, paper and binding, and is published by T. H. Flood & Co., Chicago, 1916.

SPEER'S LAW OF MARITAL RIGHTS IN TEXAS.

No subject of growing importance has received less attention from legal authors than that relating to the changes made by statute and equity decisions in the rules regulating the personal and property rights of married women. The recent work on the Law of Marital Rights in Texas, by Ocie Speer, is probably only a forerunner of similar works in other States. Of course, Texas jurisprudence relating to marital rights is complicated by the injection of Spanish laws and customs. The community estate, as a means of settling fairly the property rights of the spouses has been worked out most thoroughly in that State and has raised many interesting problems of law not altogether familiar to lawyers in other States. So, therefore, we observe in Mr. Speer's work, an entire chap-

ter of interesting discussion on Transactions in Fraud of Wife. The gradual emancipation of the married woman under Texas laws and statutes is carefully noted, especially with respect to trade, business, torts and crimes. We have no doubt that the work will be a necessary tool in every Texas lawyer's library and will not be without interest to many students of this subject in other States.

Printed in one volume of 1051 pages, bound in buckram and published by the Lawyers' Co-operative Publishing Co., Rochester, N. Y.

HUDDY'S THE LAW OF AUTOMOBILES—FOURTH EDITION.

Just ten years ago, Mr. Xenophan P. Huddy, of the New York bar, wrote his treatise on the law of automobiles and now the wonderful increase of this new locomotion on the road, its adaptation to public purposes, the varied legislation for its regulation, the licensing of its drivers and the seizure of occasion for extending the business of insurance have brought grist to judicial mills and multiplicity of statutory enactment.

Automobiles are a department in the law so far as highways are concerned as vessels are so far as highways by water are concerned. Common law principle is unfolding in new application and the doctrine of agency has a new angle of view. Decision daily outpouring produces argumentation and distinctions and causes this subject to take on a most interesting phase to the student as well as the active practitioner of law.

The fourth edition introduces new departments in the inquiry in this modern field created both by unfolding of principles and by new legislation. New cases are brought down to date and the entire matter is presented clearly, forcibly and in logical order.

This fourth edition is by Mr. Howard C. Joyce and hails, as did its predecessors, from the book house of Matthew Bender & Company, Albany, N. Y., 1916.

BOOKS RECEIVED.

Trust Laws and Unfair Competition. From the Department of Commerce, Bureau of Corporations. By Joseph E. Davies, Commissioner of Corporations. March 15, 1915. Washington. Government Printing Office.

HUMOR OF THE LAW.

Many stories are told of the delightful sense of humor of the Republican candidate for gubernatorial honors in Missouri, who was formerly a member of the Supreme Court of this State.

One day a learned counsel from Kansas City was addressing the bench. Warming to his argument and assuming a dramatic manner of imparting confidential information, he said:

"Your honor, may I tell you the truth in this case?"

"If an order of the court is necessary to enable counsel to tell the truth, consider it entered," Judge Lamm replied.

Again his quick wit is illustrated by another story.

A veteran attorney, after hearing several of Judge Lamm's decisions read from the bench, said to him:

"Judge, a hundred years from now your opinions will be read with delight by our posterity."

"My! my!" exclaimed Judge Lamm, "is it possible I will have to wait that long to be appreciated?"

The following incident, which actually took place in a trial before a magistrate at Knoxville, Tenn.:

Plaintiff sued the defendant on a debt. The defense was that one Mr. Jones had agreed to assume and pay the debt, and that plaintiff had charged the account to Mr. Jones and had looked to him for payment, and often sent Mr. Jones statements of the account. Plaintiff took the stand and testified in his own behalf making out his case against the defendant. Defendant likewise took the stand and testified in his behalf, setting up his said defense, and then introduced Mr. Jones as a witness who corroborated the defendant, and testified that he (Mr. Jones) had agreed to pay the debt, etc. At the close of the proof the magistrate stated that the proof was pretty well "mixed up," but that from the proof he "did not believe it was right for defendant to have to pay all of the debt and that he would just write Mr. Jones' name in the warrant with the defendant's and would render judgment against both of them and let each one pay his part of the judgment. Attorney for the defendant at once interceded: "Oh, you can't do that, your honor, because Mr. Jones is not before your honor's court." "Oh, yes, he is," exclaimed the magistrate; "right over there he sits next to the wall; that was him on the witness stand a while ago." Judgment was rendered against Mr. Jones accordingly.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co. St. Paul, Minn.

1. **Bankruptcy**—Assignment.—Assignees of claims against the estate of a bankrupt have the right to prove them against the estate, subject to the same limitations as to time as other creditors.—In re Breakwater Co., U. S. D. C., 232 Fed. 375.

2.——Creditors.—A relative of the bankrupt, who is a legitimate creditor, can vote for trustee.—In re Rothleder, U. S. D. C., 232 Fed. 398.

3.——Discharge.—No perjury committed by a bankrupt in bankruptcy proceedings except those against himself is ground for refusal of a discharge, notwithstanding the literal reading of Bankruptcy Act, §§ 14, 29.—In re Lesser, U. S. D. C., 232 Fed. 368.

4.——Exemption.—A bankrupt is not entitled to the exemption of an auto truck under Code Civ. Proc. Cal. § 690, unless he habitually earned his living by use thereof.—In re Schumm, U. S. D. C., 232 Fed. 414.

5.——Insurance.—Insurance policies, having a cash surrender value, on the life of a bankrupt, who can change the beneficiary, pass to the trustee, unless exempt.—In re Bonvillain, U. S. D. C., 232 Fed. 370.

6.——Lien.—Where assignments of money to accrue under a contract made by the bankrupt corporation were valid at the time of filing the petition in bankruptcy, the receivers held whatever rights the bankrupt had in the contract subject to the lien.—Jennings v. Whitney, Mass., 112 N. E. 655.

7.——Lien.—Where a maritime lien is claimed on property of a bankrupt, and a suit in admiralty brought for its enforcement, the better practice is to permit the trustee to intervene in such suit and have the question there adjudicated.—In re Interocean Transp. Co. of America, U. S. C. C. A., 232 Fed. 408.

8.——Preference.—In action by trustee in bankruptcy to recover preferential payments, evidence that, at or about the time of such payments, the defendant attached and closed the bankrupt's store is competent as tending to show defendant's knowledge of bankrupt's insolvency.—McDonough v. Cohen, Conn., 97 Atl. 861.

9.——Preference.—To be voidable as a preferential transfer under Bankr. Act, § 60b, it must appear the transfer was made within four months before petition for bankruptcy was filed, that the bankrupt was insolvent, and that the transferee had reasonable cause to believe that the enforcement of the transfer would effect a preference.—Hagar v. Watt, U. S. D. C., 232 Fed. 373.

10.——Trustee.—Election of a trustee will be disapproved, where it was obtained through the active efforts of the bankrupt.—In re Rothleder, U. S. D. C., 232 Fed. 398.

11.——Priority.—As, under the statute, payment of the clerk's filing fees has priority over payment of attorney's fees, a bankrupt cannot reverse this order, and, after paying his attorney a fee, file his petition and schedules as pauper.—In re Darr, U. S. D. C., 232 Fed. 415.

12.——Priority.—As Civ. Code Cal. § 158, allows a husband and wife to contract, a wife's claim for compensation for services rendered in her husband's business under a contract for payment will not be postponed to claims of other creditors.—In re Starr, U. S. D. C., 232 Fed. 416.

13. **Banks and Banking**—Agency.—Where a bank officer seeks to defraud both his bank and a third party, it is presumed he did not communicate his knowledge regarding the fraudulent transaction to the bank, and it is not chargeable with constructive notice thereof.—Culpeper Nat. Bank v. Tidewater Improvement Co., Va., 98 S. E. 118.

14.——Fund of Depositors.—When bank purchases note and pays full consideration therefor without notice of defenses, it becomes holder in due course, and on subsequent notice of defenses is not entitled to apply funds of payee on deposit to payment of note.—Southwestern Nat. Bank v. Ambruster, Okla., 157 Pac. 1146.

15.——Joint Deposit.—Under a joint survivorship deposit either party has authority, so far as the bank is concerned, to draw any part or the whole of the deposit on presentation of the deposit book.—Barstow v. Tetlow, Me., 97 Atl. 829.

16.——Notice.—Where funds are deposited by one in account in which he names himself as administrator the bank is chargeable with notice that the moneys belong to the estate.—Allen v. Fourth Nat. Bank, Mass., 112 N. E. 650.

17. **Bills and Notes**—Extension.—Extension of time for payment of note, granted after its execution on consideration of indorsement by third person, is valid.—Boyd v. Kelley, Miss., 71 So. 897.

18.——Informal Verdict.—In suit on due-bill, finding for plaintiff was not vitiated merely because writing did not contain word "dollars," or show that debt was payable in money, except by use of figures "227.45."—Hening v. Whaley, Ga., 89 S. E. 166.

19. **Boundaries**—Measurements.—In ejectment, plaintiff held not to have title to a marsh in the rear of his lot where his chain of title described his lot as 150 feet deep; that being the depth indicated on a plat, to which the description referred, by a line appearing to divide the lot from the marsh.—Robbins v. Walker, Va., 89 S. E. 128.

20. **Brokers**—Commissions.—Under contract, not under seal or expressing a consideration, for sale of land to any purchaser secured by plaintiff, provided sale should net $25 an acre and be made in 30 days, held commissions could not be recovered where defendant in good faith revoked the agency before purchaser was found.—Perrow v. Rixey, Va., 89 S. E. 101.

21. **Carriers of Goods**—Discrimination.—A carrier, having exacted, in the face of a protest, an excessive rate, cannot defeat the shipper's recovery on the ground that, if he is

reimbursed, there will be discrimination, contrary to Const. art. 286, against others who paid without protest; but, if the rate is illegal, all who paid it must be reimbursed.—McAdams v. Wells, Fargo & Co. Express, La., 71 So. 945.

22.——Misdelivery.—A terminal carrier is not relieved from liability for misdelivering an interstate shipment by Carmack Amendment June 29, 1906, § 7, to Act Feb. 4, 1887, § 20, making initial carrier liable for loss anywhere en route.—Georgia, F. & A. Ry. Co. v. Blish Milling Co., U. S. S. C., 36 S. Ct. 541.

23.——Negligence.—A carrier held not liable for damages for its carelessness in inserting the name of the wrong person as consignor, in consequence of which such person was paid for the shipment, where prior to the commencement of suit he had returned the money thus wrongfully paid, though the money was garnished in the hands of the consignee.—Cohen v. Minneapolis, St. P. & S. S. M. Ry. Co., Minn., 158 N. W. 334.

24.——Stipulation.—Stipulation in bill of lading requiring claims for damages or misdelivery to be presented within four months after a reasonable time for delivery has elapsed cannot be avoided by suing in trover, since the parties could not waive terms of contract, under shipment under Act Feb. 4, 1887, § 20, as amended by Act June 29, 1906, § 7, nor could carrier by conduct give shipper right to hold carrier to different responsibility from that fixed by the agreement.—Georgia, F. & A. Ry. Co. v. Blish Milling Co., U. S. S. C., 36 S. Ct. 541.

25. **Carriers of Live Stock**—Shrinkage.—Where delay caused unusual shrinkage in a shipment of cattle, recovery may be had upon proof, showing the normal shrinkage and weight of the cattle when shipped and when received.—Yazoo & M. V. R. Co. v. Armstrong & Co., Miss., 71 So. 905.

26. **Carriers of Passengers**—Assault.—In action for assault on passenger, request for instruction that if trouble between passenger and newsboy came up suddenly, and conductor knew nothing of it and could not reasonably have anticipated it, there could be no recovery, should have been granted.—Central of Georgia Ry. Co. v. Hopkins, Ga., 89 S. E. 186.

27. **Champerty and Maintenance**—Assignment.—In the absence of evidence that an attorney, who was also the assignee of a party of a claim in suit, was to be paid nothing if the suit failed, the assignment was not champertous.—Bennett v. Tighe, Mass., 112 N. E. 629.

28. **Charities**—Corporation.—Where a charitable corporation maintained a woodyard to furnish employment for discharged prisoners, and income of woodyard was insufficient to defray expenses of the corporation, the corporation is not liable for injuries to discharged prisoners working therein.—Conklin v. John Howard Industrial Home, Mass., 112 N. E. 606.

29. **Chattel Mortgages**—Unlawful Detention.—Where mortgagee prematurely took possession in claim and delivery, but before trial mortgagor defaulted, mortgagor was entitled only to damages for unlawful detention and costs of action.—Smythe v. Muri, N. D., 158 N. W. 264.

30. **Commerce**—Conditional Sale.—A piano brought into Wisconsin under a conditional bill of sale remains an article of interstate commerce while unpaid for and in possession of the original buyer.—Regina Co. v. Toynbee, Wis., 158 N. W. 313.

31.——Foreign Corporation.—St. 1915, § 1770b, requiring foreign corporations to file a certificate, etc., with the secretary of state before doing business, is inapplicable to a foreign corporation taking security for the purchase price of an article of interstate commerce.—Regina Co. v. Toynbee, Wis., 158 N. W. 313.

32.——Interstate Employment.—A brakeman on a work train picking up rails along interstate tracks to be used at other points on the interstate tracks is "employed in interstate commerce."—Canadian Pac. Ry. Co. v. Thompson, U. S. C. C. A., 232 Fed. 353.

33.——Interstate Transportation.—Car loaded with freight, consigned to points outside state, being switched within state, was being used in interstate commerce.—Whalen v. New York Cent. & H. R. R. Co., N. Y., 159 N. Y. Supp. 244.

34.——Interstate Transportation.—A train composed of cars loaded with repair materials, which originated in another state and had arrived in the state in which it was to be used, but not yet at its destination, was still in interstate commerce.—St. Joseph & G. I. Ry. Co. v. United States, U. S. C. C. A., 232 Fed. 349.

35.——Prospective Transportation.—One engaged in preparing for transportation prospective subjects of interstate commerce is not engaged in interstate commerce within the federal Employers' Liability Act.—Sullivan v. Chicago, M. & St. P. Ry. Co., Wis., 158 N. W. 321.

36. **Contracts**—Ignorance of Law.—While ignorance of the law is not a valid excuse, contractors engaged in work over country cannot be expected to be familiar with every detail of city and town charters.—Konig v. City of Baltimore, Md., 97 Atl. 837.

37. **Constitutional Law**—Taxation.—Means prescribed for valuation of property for taxation must be substantially observed, or assessment will be invalid and the taking of property without due process of law.—Graham v. City of West Tampa, Fla., 71 So. 926.

38. **Corporation**—Charter Powers.—The transfer of property to a corporation in excess of its charter rights is not void, but title passes subject only to the right of the commonwealth to avoid it in a direct proceeding for that purpose, and the transfer may be validated by later legislative action.—Collins v. Doyle's Ex'r, Va., 89 S. E. 88.

39.——Ultra Vires.—The doctrine of ultra vires concerns only the corporation in its relation with the state and with its stockholders, and is never entertained where it will injure innocent third persons.—Huntington Brewing Co. v. McGrew, Ind., 112 N. E. 534.

40. **Covenants**—Building Restriction.—Where lots are sold with reference to a recorded plant, a general scheme may be found to exist even if certain lots are sold without restrictions or if the restrictions imposed are not identical.—Sargent v. Leonardi, Mass., 112 N. E. 633.

41.——Building Restriction.—Mere doubt as to extent of building restriction in deed does not prevent its enforcement, but it must be construed fairly according to intention of parties.—Godley v. Weisman, Minn., 158 N. W. 333.

42.——Damages.—Where vendor conveys property a second time with knowledge that he had previously conveyed, and latter purchaser takes paramount title, measure of damages for breach of warranty is compensation for actual injury, including costs and expenses incident to defense of title.—Eaton v. Hopkins, Fla., 71 So. 922.

43. **Curtesy**—Tenancy.—The words "and her heirs, free from the debts, liabilities, or contracts of her husband if she should ever marry," in a deed creating a separate estate in a wife, did not import the purpose to cut off a right to a tenancy by curtesy in the surviving husband.—Travis v. Sitz, Tenn., 185 S. W. 1075.

44. **Damages**—Evidence.—Testimony of a physician that typhoid fever may be caused by polluted water or food, but that in his opinion there was a connection between plaintiff's injury and his contracting typhoid, is insufficient to warrant a finding that the illness was caused by or had any connection with the injury, and an instruction submitting such question to the jury is erroneous.—Slack v. Joyce, Wis., 158 N. W. 310.

45. **Death**—Estoppel.—Under the federal Employers' Liability Act, the settlement of her claim by one beneficiary during a suit for wrongful death in no way affects the right of the personal representative to proceed therein to final judgment.—Pittsburgh, C., C. & St. L. Ry. Co. v. Collard's Adm'r, Ky., 185 S. W. 1108.

46.——Right of Action.—Under the federal Employers' Liability Act, the right of action for wrongful death is vested in the personal representative alone, and even a sole beneficiary cannot sue, except as such representative.—Pittsburgh, C., C. & St. L. Ry. Co. v. Collard's Adm'r, Ky., 185 S. W. 1108.

47. **Divorce**—Abandonment.—Where one having domicile in Louisiana marries in another

state, and wife refuses to accompany him to station and temporary residence in army service, she is guilty of abandonment under Louisiana law, though she has never been within state.—Stevens v. Allen, La., 71 So. 936.

48.——Supersedeas.—Under Rev. St. 1909, § 2042, where an appeal bond is given in double the amount of the costs of a proceeding to secure the custody of a child, the order granting custody is superseded, since "stay of execution," as used in the statute, means stay in carrying into effect the judgment, and not a formal execution.—State ex rel. Gray v. Hennings, Mo., 185 S. W. 1153.

49. **Disorderly Conduct**—Breach of Promise.—No remark, however insulting addressed to police officer making arrest, if not in loud voice or public manner, is disorderly conduct tending to provoke breach of peace.—People v. Lukowsky, N. Y., 159 N. Y. Supp. 599.

50. **Domicile**—Defined.—"Domicile" is not a term of the common law strictissimi juris, but is a term of public law and without reference to public law it has no sensible significance. The term, taken strictly, means, at the present day, international domicile, as in order to be effective, one's domicile should confer an international status.—In re Norton, N. Y., 159 N. Y. Supp. 619.

51. **Easements**—Obstruction.—Where petitioners owned the fee in the half of a section of a passageway abutting on their lot, and their grantor owned the fee in the other half, the obstruction of the passageway would be ineffective to prevent the acquiring of petitioners' prescriptive right, unless such interruption was authorized or ratified by the grantor.—Dorntee v. Lyons, Mass., 112 N. E. 610.

52. **Embezzlement**—Indictment.—While in an indictment for the statutory crime of embezzlement a date must be named for the commission of the offense, yet, when time is not material it need not be proved as laid, but commission of the crime on some date before the finding of the indictment, and within the statute of limitations, must be shown.—State v. Davis, R. I., 97 Atl. 818.

53. **Eminent Domain**—Corporation.—A statute conferring on the state or other municipal corporation the right to condemn state or other municipal property generally, in the absence of express words to the contrary, must be confined to such property as it holds in its proprietary character.—State v. Superior Court for Jefferson County, Wash., 157 Pac. 1097.

54. **Estoppel**—Evidence.—In action to recover money paid on oral agreement for purchase of land, where defendants had at another trial publicly and upon witness stand expressed their willingness to perform the contract and made a tender, they cannot now rely on any prior default on the part of plaintiff.—Miller v. Healey, R. I., 97 Atl. 796.

55. **Executors and Administrators**—Taxation. Taxes accruing on realty before death of the owner, but not those accruing after his death, become a charge against him, and should be paid by his personal representatives out of his personalty.—Barnum v. Rallihan, Ind., 112 N. E. 561.

56. **Fraud**—Liability.—Seller's representation of value of property is not actionable if made in good faith, even where its ownership is liability, instead of asset.—Mathews v. Hogueland, Kan., 157 Pac. 1179.

57. **Frauds, Statute of**—Oral Contract.—Plaintiff could recover payment made under oral contract for purchase of land, which other party was not willing to perform, since an oral contract for sale of land is not wholly void under statute of frauds.—Miller v. Healey, R. I., 97 Atl. 796.

58. **Fraudulent Conveyances**—Waiver.—Creditor of sellers of drug store, bulk sales act not being strictly complied with because statement furnished purchaser was not under oath and not given five days before purchase, waived right to claim benefit of statute by consenting to sale, by saying he would look wholly to sellers for payment of account, and by waiting for two years before moving to void the sale.—Rice v. West, Ore., 157 Pac. 1105.

59. **Gifts**—Causa Mortis.—Where the alleged donor in making a joint deposit with right of survivorship did not intend to deprive herself of the ownership of the fund so long as she lived, or of the right to dispose of it by will, there was no gift causa mortis at that time.—Barstow v. Tetlow, Me., 97 Atl. 829.

60. **Guardian and Ward**—Process.—Where the mother of minor defendants, who had been their guardian, brought suit in her individual right, involving their interests, it was not necessary to serve her with summons in her capacity as guardian in their behalf.—Fresno Estate Co. v. Fiske, Cal., 157 Pac. 1127.

61. **Homestead**—Assignment of.—Where, after death of occupant of land, on motion of his widow, county court ordered commissioners to assign homestead exemption to her, proceeding setting aside the land was conclusive on widow and those claiming through her as to title of land being in husband.—Arendall v. Arendall, Va., 89 S. E. 87.

62.——Judgment.—Where the widow of one who at the time of his death was living upon homestead land took under his will a life estate only with remainder equally among the testator's children, the real estate in the hands of the remaindermen was not subject to a judgment obtained by one of such remaindermen against her father's estate.—Polzen v. Polzen, Wis., 158 N. W. 327.

63. **Husband and Wife**—Agency of Wife.—Where a husband gave his wife a sum of money to make purchases for their daughter, who was to be married, and directed her to charge to him any additional articles, he was liable for debts incurred by the wife.—Hays v. Cox, Mo., 185 S. W. 1164.

64.——Gift.—On trial of issue of property in claim case, jury is not required to find property not subject to levy when claimant's title rests on parol gift from her husband of personalty, which at time of gift and at date of levy was in possession of another acting as agent for husband.—Lanier v. Holt, Ga., 89 S. E. 182.

65.——Separate Estate.—A conveyance to a daughter, "to have and to hold said tract of land to the said H. L. and her heirs, free from the debts, liabilities, or contracts of her husband if she should ever marry, and not to be liable to be sold for the debts of any husband she may have, if she ever marries," created a separate estate.—Travis v. Sitz, Tenn., 185 S. W. 1075.

66. **Insurance**—Agency.—Where a soliciting agent at the instruction of the general agent took a check in payment of a policy to the beneficiary, he might be found to have been acting within the apparent scope of his authority in securing the beneficiary's indorsement on the back and returning the check to the general agent, where the beneficiary refused to accept the check and insisted upon having cash.—Shea v. Manhattan Life Ins. Co., Mass., 112 N. E. 631.

67.——Breach of Contract.—Stipulations in policy of fire insurance that it shall be void if insured procures other insurance are valid and reasonable, and when they are violated, the insurer, when loss occurs, may defend for breach of contract.—Ohio Farmers' Ins. Co. v. Williams, Ind., 112 N. E. 556.

68.——Contract.—While there should be a meeting of minds in making an insurance contract, an express agreement upon all details not being necessary, acceptance by company of an application for a policy and an unconditional deposit in post office of such policy, properly addressed is sufficient.—Hartwig v. Aetna Life Ins. Co. of Hartford, Conn., Wis., 158 N. W. 280.

69.——Extension.—That an accident insurance company delivered a renewal premium receipt held not to extend the insurance, but to be a mere offer, which the insured might accept by payment of premium or doing of acts showing intent to renew insurance.—Pacific Mut. Life Ins. Co. of California v. Vogel, U. S. C. C. A., 232 Fed. 337.

70.——Funeral Benefits.—Where by-laws of a beneficial association provided that funeral benefits were payable to certain relatives legally dependent on the member, upon death of

member payment was properly made to his widow, although he had notified the association to make his insurance payable to his aunt, a relative not dependent on him.—Passaconaway Council v. Dow, N. H., 97 Atl. 878.

71.——Foreign Corporation.—State has right to exclude foreign insurance company that has established a business in the state.—Citizens' Ins. Co. v. Herbert, La., 71 So. 955.

72.——Waiver.—Where a life company, with knowledge that a policy had lapsed, accepts a premium, it waives provisions regarding reinstatement.—Madsen v. Prudential Ins. Co. of America, Mo., 185 S. W. 1168.

73.——Waiver.—Where by-laws of benefit society provide that engaging in specified dangerous occupation shall exempt society from liability for death traceable thereto, acceptance of dues after member has engaged therein, with knowledge thereof, does not waive exemption.—Ridgeway v. Modern Woodmen of America, Kan., 157 Pac. 1191.

74. **Intoxicating Liquors**—Action.—Though mere knowledge of seller of intoxicants that purchaser intends illegally to resell does not bar seller's action for the price, such action is barred if he participates in or contributes to purchaser's intention to sell illegally, or aids the design to transgress law, or has an interest therein.—Paul Jones & Co. v. Wilkins, Tenn., 185 S. W. 1074.

75.——Evidence.—The belief of one accused of selling ardent spirits without a license as to the character of the beverage sold, or his intention to violate the law, is immaterial.—Bracey v. Commonwealth, Va., 89 S. E. 144.

76.——Evidence.—Receipt of liquor in such unusual quantities as to render it improbable that they were intended for legitimate use is to be considered in determining whether there is any other reasonable hypothesis than that of guilt.—Porter v. City of Athens, Ga., 89 S. E. 173.

77.——Evidence.—Where the indictment alleges an illegal sale of liquors to persons unknown to the grand jury, evidence of sales to persons who testified before the grand jury is inadmissible.—State v. Smith, N. J., 97 Atl. 780.

78.——License.—St. 1915, § 1549, requiring bond as condition of receiving saloon license, permits action by the state on such bond, for sale of intoxicants to person intoxicated, in advance of any unsatisfied judgment for recovery of money to be collected therefrom.—State v. Helmann, Wis., 158 N. W. 286.

79.——Unlawful Manufacture.—One who, at a place where a still is being unlawfully operated, participates in any act necessary or usual in the manufacture of liquor, is guilty of unlawfully manufacturing liquor.—White v. State, Ga., 89 S. E. 175.

80. **Joint Adventures**—Estoppel.—Where managers of an underwriting syndicate were given the widest discretion, save that they were to act in good faith, held, that a pledge of syndicate property which they made with trustees of a real estate trust they were attempting to form was valid, and could not be questioned by members.—Minot v. Burroughs, Mass., 112 N. E. 620.

81. **Landlord and Tenant**—Latent Defect.—Where there is latent defect in leased premises, such as original structural weakness, decay, or presence of infectious disease, known to lessor, and not to lessee, nor discoverable on reasonable inspection, lessor is liable for injuries resulting.—Smith v. Wolsiefer, Va., 89 S. E. 115.

82.——Taxes.—Where the lessee agreed to pay all annual taxes, the lease stipulating that by annual taxes is meant the annually recurring municipal tax, and not any betterment taxes for street construction, or other special taxes or assessments, the taxes required to be paid are all annual taxes.—Boston Fish Market Corp. v. City of Boston, Mass., 112 N. E. 616.

83. **Licenses**—Prohibition.—Under Rev. St. 1909, § 1193, granting to the county court power to license pool and billiard tables, but containing no authority to prohibit them, the county court cannot indirectly prohibit them by refusal to grant a license without cause other than the desire to prohibit.—State ex rel. Bayless v. Clinton County Court, Mo., 185 S. W. 1149.

84. **Liens**—Particular Fund.—Where a debtor merely gives his personal promise to pay his creditors from a particular fund, the fund is not chargeable with an equitable lien.—Jennings v. Whitney, Mass., 112 N. E. 655.

85. **Logs and Logging**—Sale.—The right of "turpentining" is not embraced in the right to cut, remove, or manufacture timber.—Yarbrough v. Stewart, Ala., 71 So. 986.

86. **Master and Servant**—Assumption of Risk.—Where deceased, employed by defendant in stacking hay, was injured by hay fork, caused by starting of horse attached to it, had told defendant that boy driving horse was satisfactory to him, and had made no complaint, he was held to have assumed risk incidental to work.—King v. Ramsey, Wash., 157 Pac. 1077.

87.——Elevator.—An elevator is not a "vehicle" within the classification of group 41 of Workman's Compensation Law, which embraces the operation "otherwise than on tracks, of cars, trucks, wagons, and other vehicles," etc.—Wilson v. C. Dorflinger & Sons, N. Y., 112 N. E. 567, 218 N. Y. 84.

88.——Fellow-Servant.—Where a helper of an automobile truck driver, pursuant to instructions from the driver, operated the truck alone, and in so doing was injured, the fellow-servant rule held not to apply, although, among other duties, the injured employe was required to assist the driver in loading and unloading the truck.—Collins v. Terminal Transfer Co., Wash., 157 Pac. 1092.

89.——Hazardous Employment.—The business of owning and operating apartment houses is not "hazardous," and employes injured in such business cannot recover under the Workmen's Compensation Law.—Sheridan v. P. J. Groll Const. Co., N. Y., 112 N. E. 568.

90.——Hazardous Employment.—The business of owning and operating a loft building is not "hazardous," and employes injured in such business cannot recover under the Workmen's Compensation Law.—Chappelle v. Four Hundred and Twelve Broadway Co., N. Y., 112 N. E. 569.

91.——Proximate Cause.—In an action for death of brakeman while under a car making repairs, negligence of the brakeman in long delaying to make such repairs must be regarded as a remote and not a proximate cause of the injury; it being superseded in the chain of events by negligence of the engineer starting the engine without signal.—Haines v. Chicago R. I. & P. Ry. Co., Mo., 185 S. W. 1187.

92.——Relief Department.—Action by railroad employe for money deducted from salary for the employes' relief department, effect of which action is to challenge validity of entire institution, cannot be abated by plaintiff's failure to first submit his claim to defendant's superintendent, and then to appeal to operating committee, pursuant to rules of relief department, before taking matter into court.—Baltimore & O. S. W. R. Co. v. Miles, Ind., 112 N. E. 524.

93.——Unsafe Place.—Where a carpenter, in putting up a scaffold on the inside of a brick wall, did not know a tier of bricks was leaning toward the inside, though masters' foreman knew that fact, carpenter cannot be denied recovery, the tier falling, on ground that he was making safe an unsafe place.—Winter v. Chicago, R. I. & P. Ry. Co., Mo., 185 S. W. 1172.

94.——Workmen's Compensation Act.—The employment as helper to driver of an automobile truck is not within the provision of Workmen's Compensation Act, enumerating extrahazardous employments, nor has it been so classified by the Industrial Insurance Commission.—Collins v. Terminal Transfer Co., Wash., 157 Pac. 1092.

95.——Workmen's Compensation Act.—Workmen's Compensation Act, providing that the weekly wages shall be taken to be six times the average daily earnings for a working day of ordinary length, excluding overtime, does not apply when the servant receives a fixed wage per day, but only when his wage is fixed by his output.—Conners v. Public Service Electric Co., N. J., 97 Atl. 792.

96.——Workmen's Compensation Act.—Under Workmen's Compensation Act, § 14, employment of a house painter at a rate per day for indefinite period, owner to furnish materials, held "casual," and, not being in course of any business of owner, was of a nature which did not entitle employe to compensation under the act for an injury.—Blood v. Industrial Acc. Commission of State of California, Cal., 157 Pac. 1140.

97. **Municipal Corporations** — Architect. — A contract of an employe of the highway department of a city to do extra work as an architect for municipal buildings and to receive compensation therefor is repugnant to the common law, as permitting a clash of interests of the city and the individual.—Seaman v. City of New York, N. Y., 159 N. Y. Supp. 563.

98.——Bonds.—Where municipality issues bonds in separate amounts for several purposes and severable amount, if the bonds may not legally be issued by city, bonds that are legal may be sustained, and those that are illegal declared invalid.—Munroe v. Reeves, Fla., 71 So. 922.

99.——Jitneys.—An ordinance requiring jitney drivers to own the vehicles respectively operated by them is invalid because unreasonable. —Parrish v. City of Richmond, Va., 89 S. E. 102.

100.——Taxation.—St. 1915, § 931, authorizing municipalities to levy a tax for free public libraries, including nonsectarian secular libraries, is not invalid because authorizing expenditure of funds by corporation trustees not appointed by the city; the test being whether the purpose is public, and not whether the agency is public.—State v. Bentley, Wis., 158 N. W. 306.

101.——Taxicab.—In an action for injuries by defendant's taxicab, it is not necessary that plaintiff be exactly on street crossing to entitle him to protection of an ordinance giving pedestrians right of way on street crossing.—Yanase v. Seattle Taxicab & Transfer Co., Wash., 157 Pac. 1076.

102. **Partnership** — Purchase by Partner. — Purchase of goods from plaintiff by one of two partners for a use not falling within the ordinary scope of the partnership was not binding on the other partner, and created no liability, even though plaintiff was without knowledge that contracting partner was violating his obligation to partnership.—Samstag & Hilder Bros. v. Ottenheimer & Weil, Conn., 97 Atl. 865.

103. **Principal and Agent**—Commission.—In detinue by an automobile manufacturer for an automobile, held that, where plaintiff had authorized the sale of the car by its agent, the purchaser's canceling of a debt of the agent as part payment on the car, where such debt did not exceed the agent's sale commission, did not avoid the sale.—Broad Street Bank v. Baker Motor Vehicle Co., W. Va., 89 S. E. 110.

104. **Railroads** — Contributory Negligence.— Where a train without headlight coasting down a valley on a dark night, not whistling, and violating an ordinance by not ringing the bell and by excessive speed, collided with plaintiff at a crossing where his view was somewhat obstructed by buildings, his contributory negligence in not seeing the train was for the jury.—Dale v. Smith, Mo., 185 S. W. 1183.

105.——Fencing Track.—Under St. 1915, § 1810, requiring railroad to fence track, where boy of 16 entered railroad's unfenced right of way, boarded moving freight, and, in attempting to get off while in motion, after traveling some miles, was killed, road was not liable for death.—Vaillant v. Chicago & N. W. Ry. Co., Wis., 158 N. W. 311.

106.——Licensees.—Railroad companies owe no duty of provision to licensees, but must, with facilities at hand, and under circumstances as they exist, exercise reasonable care to discover and avoid injuring them.—Washington & O. D. Ry. v. Ward's Adm'r, Va., 89 S. E. 140.

107. **Records**—Registration.—In action to register title, under Torrens Law, conclusion that plaintiff has a record title in fee simple must rest upon facts uncontroverted or established, and court may not accept official examiner's conclusion, and plaintiff may supplement relevant facts stated in certificate of title, the abstract, survey, etc., by common-law or statutory evidence.—Jamieson & Bond Co. v. Reynolds, N. Y., 159 N. Y. Supp. 317.

108. **Sales**—Defenses.—Defendant, who contracted by telephone, to purchase 50 tons of steel, and wrote confirming the order, giving sizes wanted and amounts, could not defend his breach by refusal to accept more than 10 tons, on the ground that the letter was written under mistake, and was unintentionally untrue. —Carnegie Steel Co. v. Connelly, N. J., 97 Atl. 774.

109.——Sole Cause.—The fraudulent effort need not be the sole cause of a contract entered into by the defrauded party, but it is enough if it was an effective cause along with other consideration.—Friend v. Jones, Mo., 185 S. W. 1159.

110. **Seduction**—Corroboration.—The uncorroborated evidence of the woman seduced does not authorize a conviction, but corroboratory evidence as to any material fact which satisfies the jury that she is worthy of belief is sufficient.—Herring v. State, Ala., 71 So. 974.

111. **Set-Off and Counterclaim**—Pleading.— In suit on note against two persons, defendants may file plea that note, though purporting to be signed in their individual capacity, evidenced debt for firm of which they were the only partners, and thereupon plead as set-off account due firm.—Ocmulgee Guano Co. v. Price, Ga., 89 S. E. 156.

112. **Street Railroads**—Assumption of Risk.— Where the complaint in an action against a street railroad for damages to an automobile charged a negligent failure to guard an excavation with sufficient danger signals, a plea alleging by way of conclusion that plaintiff "assumed the risk" of driving between the lights was a plea of the general issue.—Kearns v. Mobile Light & R. Co., Ala., 71 So. 993.

113. **Taxation**—Equalization.—The courts will grant relief from a grossly excessive overvaluation for taxation as constructively fraudulent, though the assessing officers may have proceeded in good faith, and this without regard to the action of the board of equalization.—First Thought Gold Mines v. Stevens County, Wash., 157 Pac. 1080.

114.——Public Purpose.—The power to tax cannot be conferred on a municipality or subordinate state agency for other than public purposes.—State v. Bentley, Wis., 158 N. W. 306.

115. **Telegraphs and Telephones**—Jury.— Where a telegraph company failed to deliver a message within proper limits, and due to neglect of its servants to transmit, and without other excuse, and the addressee sued for punitive damages, it was error to refuse to submit that issue to the jury.—Postal Telegraph-Cable Co. v. Ross, Miss., 71 So. 904.

116.——Messenger.—Where telegraph company sends messenger after message, he becomes the company's agent, and it cannot excuse delay in transmission of the message due to the messenger's negligent delay in returning with it.—Keeting v. Western Union Telegraph Co., Mo., 185 S. W. 1163.

117. **Trusts**—Will.—That sale of decedent's realty could not be made advantageously in present condition of realty market is no sufficient excuse for failure of trustees to sell it and divide proceeds in accordance with will.— In re Frost's Estate, N. Y. 159 N. Y. Supp. 613.

118. **United States**—Extension.—Encountering of submerged forest in excavating a channel for the United States held not to relieve contractor from liability to pay liquidated damages and additional costs of inspection if the work is not finished in time, where chief engineer refused to sanction any extension of time.— Maryland Dredging & Contracting Co. v. United States, U. S. S. C., 36 S. Ct. 545.

119. **Wills**—Construction.—Where absolute fee in land is given by will, such estate will not be cut down by subsequent clause, in same paragraph, giving devisee personal estate for life, and then to be divided equally between testator's heirs.—Criner v. Geary, W. Va., 89 S. E. 149.